INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
Summary of Argument	12
Argument:	
I. The application of the Norris-La Guardia Act to this case	15
II. The jurisdiction of the district court	22
III. The validity of the Board's certification—whether the Railway Labor Act requires a bargaining unit to be carrier-wide	28
A. The meaning of "craft or class," as indicated by the legislative history of the Act	31
B. There is no merit to petitioners' arguments that the Board was required as a matter of law to hold the yardmen on the Michigan Central and Lines-West to be separate crafts	43
1. The employees "involved in the dispute"	44
2. Interference with freedom of association and selection of representatives	46
3. The proviso in Section 1, Fifth	47
4. Preexisting contracts	51
Appendix	55
Cases:	
Association of Clerical Employees v. *Brotherhood of Railway Clerks*, 85 F. (2d) 152	19
Beal v. *Mo. Pac. R. Corp.*, 312 U. S. 45	23
Belknap v. *Schild*, 161 U. S. 10	25
Brotherhood of Locomotive Firemen and Enginemen v. *Kenan*, 87 F. (2d) 651, certiorari denied *sub nom. Grand International Brotherhood* v. *Kenan*, 301 U. S. 687	19, 27
Brotherhood of Railroad Shopcrafts v. *Lowden*, 86 F. (2d) 458, certiorari denied, 300 U. S. 659	20
Brotherhood of Railroad Trainmen v. *National Mediation Board*, 88 F. (2d) 757	19, 27, 53
Brotherhood of Railroad Trainmen v. *National Mediation Board*, 135 F. (2d) 780	20, 53

Cases—Continued. Page

Brotherhood of Railway Clerks v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 ..... 25, 27, 53
Brotherhood of Railway Clerks v. *Virginian Ry. Co.*, 125 F. (2d) [illegible] 27
Cole v. *Atlanta Terminal Company*, 15 F. Supp. 131 ..... 20, 21
Cunningham v. *Macon & Brunswick R. R.*, 109 U. S. 446 25
Fur Workers' Union v. *Fur Workers' Union*, 105 F. (2d) 1, affirmed 308 U. S. 522 17
Green v. *Obergfell*, 121 F. (2d) 46 17
Heller Bros. Co. v. *Lind*, 86 F. (2d) 862, certiorari denied, 300 U. S. 672 25
Hopkins v. *Clemson College*, 221 U. S. 636 23
International Brotherhood of Teamsters v. *International Union of United Brewery Workers*, 106 F. (2d) 871 17
La Prade, Ex parte, 289 U. S. 444 23
Louisiana v. *McAdoo*, 234 U. S. 627 25
Milk Wagon Drivers' Union v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91 18
Myers v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41 20
Nashville, C. & St. L. Ry. v. *Railway Employees' Dept.*, 93 F. (2d) 340, certiorari denied, 303 U. S. 649 27
National Federation of Railway Workers v. *National Mediation Board*, 110 F. (2d) 529, certiorari denied, 310 U. S. 628 ..... 20, 27
Nord v. *Griffin*, 86 F. (2d) 481, certiorari denied, 300 U. S. 673 20
Order of Railway Conductors v. *National Mediation Board*, 113 F. (2d) 531 ..... 20, 27, 48, 53
Philadelphia Company v. *Stimson*, 223 U. S. 605 23
Railroad Yardmasters v. *Pittsburgh & L. E. R. Co.*, 39 F. Supp. 876 20
Rochester Telephone Corporation v. *United States*, 307 U. S. 125 25
Shields v. *Utah-Idaho Central R. Co.*, 305 U. S. 177 26
Texas & New Orleans R. Co. et al. v. *Brotherhood of Railway Clerks*, 281 U. S. 548 ..... 19, 26, 47
Transcontinental & Western Air, Inc., v. *Farley*, 71 F. (2d) 288, certiorari denied, 293 U. S. 603 25
United States v. *American Trucking Assns.*, 310 U. S. 534 20
United States v. *Hutcheson*, 312 U. S. 219 ..... 17, 18
Virginian Ry. Co. v. *System Federation No. 40*, 300 U. S. 515 ..... 13, 17, 22, 23, 25, 26, 27, 47, 51
Watson v. *Buck*, 313 U. S. 387 23
Wells v. *Roper*, 246 U. S. 335 25
Yearsley v. *Ross Construction Co.*, 309 U. S. 18 23

Statutes: Page

National Labor Relations Act, Sec. 9 (b), 29 U. S. C., Sec. 159 (b) 12

Norris-LaGuardia Act, 47 Stat. 70:

Section 1, 29 U. S. C., § 101 16

Section 7, 29 U. S. C., § 107 21

Section 13 (a), 29 U. S. C., § 113 (a) 16

Section 13 (c), 29 U. S. C., § 113 (c) 16

Railway Labor Act, as amended, 48 Stat. 1185, 45 U. S. C., § 151, *et seq.*:

Section 1, First 55

Section 1, Fifth 14, 47, 48, 49, 50, 56

Section 1, Sixth 56

Section 2 46

Section 2 (1) 56

Section 2, Third 46

Section 2, Fourth 44, 45, 46, 57

Section 2, Ninth 14, 44, 46, 47, 49, 50, 57

Title II, 49 Stat. 1189, 45 U. S. C., §§ 181–188 40

Miscellaneous:

75 Cong. Rec. 4936–4937 19

78 Cong. Rec. 12372 50

Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act Amendments, 73d Cong., 2d sess. 33, 34, 35, 36, 50

Hearings before the Senate Committee on Interstate Commerce on S. 3266, to amend the Railway Labor Act, 73d Cong., 2d sess. 33, 47, 50

H. Rept. No. 669, 72d Cong., 1st sess., p. 3 18

H. Rept. No. 1944, 73d Cong., 2d sess. 47

National Mediation Board, *Eighth Annual Report*, Table 14 40

National Mediation Board, *In the Matter of Representation of Employees of the Delaware, Lackawanna & Western Railroad Company*, Cases M–199 and R–358, August 13, 1937, pp. 6, 7 ..... 32, 53

Rules for Reporting Information on Railroad Employees, together with a Classification and Index of Steam Railroad Occupation, issued by the United States Railway Labor Board and approved by the Interstate Commerce Commission (1921) 48

S. Rept. No. 163, 72d Cong., 1st sess., p. 25 17

S. Rept. No. 1065, 73d Cong., 2d sess. 47

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 48

SWITCHMEN'S UNION OF NORTH AMERICA ET AL., PETITIONERS

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON, AND HARRY H. SCHWARTZ, AND BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON, AND HARRY H. SCHWARTZ

OPINIONS BELOW

The district court rendered no opinion; its findings of fact and conclusions of law are found at R. 76–81. The opinions of the United States Court of Appeals for the District of Columbia (R. 160–193) are reported at 135 F. (2d) 785.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943 (R. 193). The petition for certiorari was filed April 16, 1943, and granted May 24, 1943 (R. 196). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTIONS PRESENTED

In its order granting certiorari this Court requested the parties to discuss the following questions applicable to this case:

(1) What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

(2) Whether the district court had jurisdiction to review the certification of the Board.

The question presented on the merits is—

(3) Whether under the Railway Labor Act all of the employees of a carrier engaged in the same occupation must be treated as members of a single craft or class for purposes of collective bargaining.

STATUTE INVOLVED

The statute involved is the Railway Labor Act, as amended, in 1934 (48 Stat. 1185, 45 U. S. C. Sec. 151, *et seq.*). The pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 55–58.

STATEMENT

On July 2, 1940, the Brotherhood of Railroad Trainmen (hereinafter referred to as B. R. T.) invoked the services of the National Mediation Board to investigate a representation dispute among the yardmen of the New York Central Railroad Company (R. 27–28, 76). With its application, B. R. T. presented to the Board signed authorizations from 4,749 out of approximately 6,087 yardmen then employed by the Company (R. 35–36, 79–80, 137–138). At that time the Switchmen's Union represented yardmen in all yards on the Michigan Central branch of the New York Central west of the Detroit River,[1] and in all but nine yards of the New York Central Lines—West (R. 78–79, 96). The B. R. T. represented the yardmen on the remainder of the lines operated by the New York Central Railroad Company (*ibid.*).[2]

[1] The portion of the Michigan Central lines east of the Detroit River is in Canada.

[2] The number of authorizations presented from the yardmen on the New York Central Lines—West and the Michigan Central Lines was 774 and 479, respectively. The total number of yardmen on these lines was 1,362 and 1,072, respectively (R. 35–36, 79–80, 136–137). Petitioners state (Br. p. 24) that "There is no conclusive evidence in the record which discloses that any of the yardmen covered by the contracts of the Switchmen's Union questioned or disputed the right of such union to represent them." But most of the yards on Lines—West and all of the Michigan Central

The Brotherhood claimed that all the yardmen on the New York Central constituted a single craft or class within the meaning of the Act, and that since a majority of this craft or class desired to be represented by it, it should be certified as the representative (R. 28–29, 79–80). The Switchmen's Union, on the other hand, insisted that it was the representative of the yardmen on the Michigan Central and portions of Lines—West, that these properties constituted separate carriers, and that these groups constituted separate crafts or classes not part of a larger craft covering the entire railroad (R. 29–31, 79–80).

The Board investigated, and after finding that the parties were unable to agree, concluded that a dispute existed and set the matter for hearing in order to determine the basis upon which to conduct an election among the employees involved (R. 28–29, 76, 83). The evidence at the hearing may be summarized as follows:

The New York Central Railroad Company was created through a consolidation in 1914 of the New York Central and Hudson River Railroad and the Lake Shore and Michigan Southern Railway, operating lines from New York City to Chicago. The portion east of Buffalo has since

---

Lines in the United States were under Switchmen's Union contracts (R. 35). It has never been suggested heretofore that all, or indeed any, of the authorizations for the latter line came from the employees operating under B. R. T. contracts, who were in Canada and thus not subject to the Board's jurisdiction.

been known as New York Central Lines—East, and the portion west of Buffalo as New York Central Lines—West. The New York Central Railroad Company also has leased lines previously operated by other railroad companies (most of which are its subsidiaries), and operates them. (R. 76–77.) The railroad companies whose lines are thus operated are the Boston and Albany, the Big Four, the Michigan Central, and the Toledo & Ohio Central.[3] The New York Central owns no stock of the Boston and Albany, but has controlling stock ownership in the other lines (R. 77). It owns 99.44 per cent of the capital stock of the Michigan Central, which is maintained in existence as a corporation solely to preserve the minority rights of a few stockholders who have refused to sell their stock (R. 91). The leases between the New York Central (lessee) and the various subsidiaries are for 99 years renewable in perpetuity, except for the lease on the Toledo & Ohio Central, which is to continue for the corporate existence of the lessor.[4] The leases pro-

[3] Other railroad companies, the stock of which is owned by the New York Central, are operated as independent railroads under their own management (R. 91–92). Such roads (*e. g.*, the Pittsburgh and Lake Erie), although part of the New York Central System, are not operated by the New York Central Railroad Company and are not involved in this case.

[4] Each of these lessor companies has long-term leases on a number of smaller railroads which are now operated under the lease between the intermediate lessor company and the New York Central Company (R. 33–34).

vide for payment by the lessee of annual rents, interests on outstanding obligations, taxes, and organization expenses and also provide that all rentals and charges for which the lessor railroad may become liable during the term of the lease shal be paid by the lessee. (R. 88–92.)

In the operation of the railroad company, common executives serve both the New York Central and the leased lines and coordinate activities where the use of more than one part or line of the company is involved. The Executive Vice President coordinates the activities of the mechanical and maintenance-of-way departments, and train service coordination is secured through managers of passenger and freight transportation who plan and supervise the through passenger and freight service affecting all the lines. Corresponding officers on the separate divisions of the railroad look after the detailed operations on the properties. (R. 36–38, 77–78, 146–147.)

Management of the carrier's affairs follows neither the corporate nor geographical lines of the subsidiaries. The superintendent at Toledo has jurisdiction over the entire Toledo terminal, in which is included portions of the Michigan Central, Lines—West, and the Toledo and Ohio Central. (R. 116.) The Superintendent of the Western Division has jurisdiction over the Illinois Division of the New York Central Lines—West, the Western Division of Michigan Central, the Michigan Central yards in Chicago, and the Big

Four yards at Danville, Illinois (R. 117). The timekeeping department located at Detroit handles pay rolls for Lines—West, the Michigan Central, the Big Four, and the Toledo and Ohio Central; the pay rolls for the Lines—East and the Boston and Albany are prepared in Utica (R. 37–38, 78, 115–117). The jurisdiction of the Medical Director of the New York Central Railroad includes all the leased lines with the possible exception of the Boston and Albany (R. 118). The New York Office of the New York Central Railroad has to approve expenditures for equipment on the subsidiary lines (R. 133–135). The New York Central Railroad Company has considered that all leased lines are an integral part of the Railroad, and that together with the New York Central they constitute one railroad (R. 99–100).

Negotiations between management and representatives of employees are subject to the general supervision of the Vice-President-Personnel of the New York Central. While the Vice-President-Personnel's principal function is to serve in an advisory capacity to the responsible officials of the different properties, on occasion he has participated in actual negotiations for changes in rules or working conditions applicable only to certain subsidiaries. (R. 38, 78, 125–127, 148.)

With respect to employee grievances, bureaus have been established at various points not necessarily corresponding to the separate lines. In some cases the handling of grievances has been

concluded with the bureau or Vice President located at the particular point. In other cases, the grievances have been carried to and handled by Vice-President-Personnel before submitting them to the National Railroad Adjustment Board. (R. 38, 78, 118–120.)

Existing agreements between the management and representatives of other crafts or classes of employees vary in their territorial scope, but in most instances these agreements cover the employees of the given craft or class on each leased line and on the New York Central—Lines East and Lines West separately (R. 35–38, 78, 148–150). Many of these agreements had been made before the operations of the leased lines had been taken over by the New York Central (R. 78). There has not yet been a general movement on either the part of the management or the employees to adopt agreements covering the entire railroad (R. 78, 94–95, 113–115). There have been several instances of merging of seniority rosters of yardmen in the service of the subsidiary lines (R. 38, 78–79, 125–126).

Since 1935, engine numbers on the Big Four locomotives have been changed to correspond with the New York Central locomotive numbers, and in similar fashion, numbers on boxcars and other equipment, even when they do not leave the lines of the Big Four, have been conformed. No per diem charge is exacted on locomotives and

cars exchanged between the New York Central and the Big Four (R. 38–39, 79, 134–136).

The New York Central files with the Interstate Commerce Commission annual operating reports for all of its operations, which cover its leased lines and which are not broken down to show the operations of such lines separately. The New York Central likewise files 13 different monthly and quarterly reports which include the results of operations over all of its leased lines, except that certain of these reports are filed separately for the Boston and Albany.[5] The leased lines retain their corporate identity and file annual *financial* reports with the Interstate Commerce Commission. Also, separate monthly accident reports are filed for them, all of which are signed by the General Claims Attorney of the New York Central Railroad Company; the New York Central Railroad Company similarly segregates the monthly accident reports of its Lines East and West. (R. 8, 73–79.)[6]

On the basis of this evidence the Mediation Board found that the Michigan Central and

[5] Separate reports are filed for the Boston and Albany at the specific request of the Commission, which desires the break-down of this information because of the relative statistical importance of the Boston and Albany in the New England region (R. 73–75, 84–87).

[6] These accident reports are filed on an individual, rather than a consolidated, basis in order to provide accident data for use, among other things, in connection with the promotion of safety (R. 75).

Lines—West were not separate carriers, but were part of the properties operated by the New York Central Company as a single carrier. The Board concluded as a matter of law that it was required to hold that all the yardmen of a carrier constituted a craft or class within the meaning of the Act. (R. 27–47.) Accordingly, the Board ordered an election to be held among all the yardmen employed by the New York Central Railroad Company (R. 46–47).

The election was held after the Switchmen's Union had brought this suit and sought a temporary injunction in an unsuccessful attempt to restrain the Board from proceeding (R. 2A).[7] Of 7,187 employees eligible to vote, 4,112 voted for the B. R. T. and 941 for the Switchmen's Union (R. 48–49). The Board thereupon, on April 24, 1942, certified the B. R. T. as the representative of the craft or class of yardmen employed by the New York Central Railroad Company (R. 47–49).

The Switchmen's Union and some of its members, petitioners herein, are suing to have the Board's certification set aside and to enjoin the

[7] This suit was brought originally to restrain the Board from holding the election. After a temporary injunction was denied by the district court (R. 2A), the election was held and the Board's certification issued. The complaint was thereupon amended so as to pray that the certification be set aside. The case is now before this Court on the pleadings as amended after the issuance of the Board's certification, and as subsequently amended after pretrial conference so as to consolidate the original and amended pleadings.

Board from combining the yardmen employed on New York Central Lines—West and the Michigan Central with other yardmen employed by the New York Central Railroad as a single craft or class. The B. R. T., the New York Central Railroad Company, and the Michigan Central Railroad Company were also made party defendants (R. 4–5), and the complaint prays that they be enjoined from negotiating or making agreements governing the yardmen on the Michigan Central and Lines—West (R. 26).

The district court heard the case upon the pleadings (R. 3–73), the record before the Board (R. 82–159, 27–39), and a stipulation of the parties (R. 73–75). It entered findings of fact and conclusions of law to substantially the same effect as the findings of the Board (R. 76–81). It held that the Board's finding that all the lines operated by the New York Central Railroad Company constituted a single carrier for purposes of the Railway Labor Act was supported both by substantial evidence and by the weight of the evidence, and was not arbitrary, capricious, or unreasonable (R. 80–81). The court also held that the Board's conclusion that all the employees in a particular craft or class in the service of a single carrier were to be taken together as the proper basis for selecting a representative was proper and not to be set aside. Accordingly, the court entered judgment dismissing the complaint. (R. 80–81.)

This judgment was affirmed by the United States Court of Appeals for the District of Columbia (R. 160–181), with Mr. Justice Rutledge dissenting (R. 181–193). Although the dissenting opinion rejected petitioners' contentions, it concluded that the Board had discretion to determine whether the craft or class bargaining unit should be carrier-wide in the particular case, and that there was no rule of law justifying the Board's refusal to exercise its discretion here.

SUMMARY OF ARGUMENT

I

Although the prayers for injunctive relief fall within the terms of the Norris-LaGuardia Act, that Act was not designed to reach suits to review the orders of governmental agencies; the evils at which the Act was directed were of an entirely different character. Accordingly, we have grave doubts as to whether the Act should be construed so as to apply to this type of case. In any event, insofar as the presently pertinent prayers for relief against the Board and its members are concerned, the complaint does not seek an injunction, but to have the Board's certification set aside.

II

The Railway Labor Act contains no provision authorizing suits to set aside certifications of the National Mediation Board. In the absence of leg-

islative consent to such a suit, the district courts have no jurisdiction over the Board itself, or to set aside the Board's certification, inasmuch as that is the final act of the Board as Board and not of its members as individuals. Moreover, there is no basis for equitable relief against the members of the Board, inasmuch as there is nothing they can do which can injure petitioners once the certification has been issued. Apart from the Norris-LaGuardia Act, the district court would, however, appear to have jurisdiction over the case insofar as the carrier and the opposing labor organization are concerned, inasmuch as equity may protect an organization claiming to have the lawful right exclusively to represent a craft of employees so as to prevent a carrier from bargaining with a competing union. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515.

III

A. The Board's decision that as a matter of law the "craft or class" referred to in the Act was a carrier-wide bargaining unit is supported by the interpretation of Commissioner Eastman, who explained, as well as of those who opposed, the provision before the congressional committees. An amendment suggested by the carriers in order to avoid the very situation presented here was not adopted. Whether the requirement of a carrier-wide bargaining unit is wise as a matter of policy

is a difficult question to answer. We believe the Board's decision accords with the only available manifestations of legislative intention, but have no other reason to oppose a construction of the Act which would allow the Board to exercise greater discretion.

B. Petitioner's arguments that the Board was required as a matter of law to hold that the yardmen on the Michigan Central and Lines—West constitute separate bargaining units is without merit. The contention that only the yardmen on those portions of the New York Central are "involved in the dispute" begs the question; the yardmen on the rest of the railroad are involved if all New York Central yardmen form a single craft or class. The provisions of the Act protecting the employees' freedom of association and right to select representatives of their own choosing are directed at interference by the employer and have nothing to do with the scope of the bargaining unit. Section 1, Fifth, of the Act was never intended to preclude determination by the Board of the proper limits of a craft or class in resolving a representation dispute; if that paragraph were construed as petitioners suggest, it would conflict with the more specific and subsequently enacted provisions of Section 2, Ninth, authorizing the Board to decide such questions. Although preexisting contracts are among the factors to be considered by the Board in deter-

mining the limits of a craft or class, they are plainly not made conclusive by the Act.

ARGUMENT

I

THE APPLICATION OF THE NORRIS-LA GUARDIA ACT TO THIS CASE

The Court has asked the parties to discuss "what bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought."

The petitioners' complaint prays the court (1) to enjoin the Mediation Board from issuing a certification that the B. R. T. represents yardmen on the Michigan Central and New York Central Lines—West,[8] (2) to enjoin the Board from entering an order combining the yardmen on the entire New York Central into a single craft or class for collective bargaining purposes,[9] (3) to vacate, set aside, and annul the Board's finding that the yardmen on the New York Central constitute a single craft and its order that an election be conducted on that basis,[10] (4) to annul, vacate, and set aside the Board's certification that the B. R. T. has been duly designated to represent the yardmen employed by the New York Central Railroad,[11] and (5) to enjoin the defendants B. R. T.

[8] See Paragraph 2 of the prayer for relief (R. 24–25).
[9] See Paragraphs 3 and 4 of the prayer (R. 25).
[10] See Paragraphs 5 and 6 of the prayer (R. 25–26).
[11] See Paragraph 7 of the prayer (R. 26).

and the New York Central Railroad Company from negotiating, entering into or maintaining an agreement covering yardmen employed on the Michigan Central and Lines—West.[12] Inasmuch as the Board has already held the election and issued its certification combining the yardmen on the New York Central into a single craft (R. 47–49), the attempt to enjoin it from doing so can no longer be successful,[13] and the controversy with respect to those parts of the prayer is now moot.

The Norris-LaGuardia Act provides that "no court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act" (Section 1, 47 Stat. 70, 29 U. S. C. § 101). "Labor dispute" is defined as including "any controversy concerning * * * representation" (Section 13 (c), 29 U. S. C., § 113 (c)), and the Act provides that "a case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry * * * whether such dispute is * * * (3) between one or more employees or associations of employees and one or more employees or associations of employees" (Section 13 (a), 29 U. S. C., § 113 (a)). Since the instant case arose out of a dispute as to representation between two as-

[12] See Paragraph 8 of the prayer (R. 26).

[13] See note 7, *supra*, p. 10.

sociations of employes, it would seem to fall within the literal coverage of the Act. It has been held in a number of cases that the Act is applicable to jurisdictional disputes between labor organizations. (*Fur Workers' Union* v. *Fur Workers' Union*, 105 F. (2d) 1 (App. D. C.), affirmed, 308 U. S. 522; *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers*, 106 F. (2d) 871 (C. C. A. 9); *Green* v. *Obergfell*, 121 F. (2d) 46 (App. D. C.); cf: *United States* v. *Hutcheson*, 312 U. S. 219.

Nevertheless, we do not believe that the Norris-LaGuardia Act was designed or intended to reach cases such as this.[14] The Senate committee report (No. 163, 72d Cong., 1st Sess., p. 25) stated that "the main purpose" of the definitions in Section 13—

> is to provide for limiting the injunctive powers of the Federal courts only in the special type of cases, commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority and wherein the courts have been converted into policing

[14] Inasmuch as an action to set aside a Mediation Board certification is not authorized by the Railway Labor Act, the suit against the Board and its members would not appear to fall in the same class as a suit to enforce the statutory mandate that a carrier treat with the certified representative. The latter type of action was held in *Virginian Ry. Co.* v. *System Federation No. 40*, (300 U. S. 515, at 563), not to be subject to the Norris-LaGuardia Act.

> agencies devoted in the guise of preserving peace, to the purpose of aiding employers to coerce employees into accepting terms and conditions of employment desired by employers.
>
> The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable. * * *

The declaration of public policy in Section 2 of the Act demonstrates that its object was to assure employees the right to self-organization without interference by the employer, and the terms of the Act show that it was intended to protect the rights of labor to engage in types of conduct which the courts had previously enjoined. The legislative history of the Act and the decisions of this Court under it uniformly recognize that "the purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act * * *." H. Rep. No. 669, 72d Cong., 1st Sess., p. 3; *United States* v. *Hutcheson*, 312 U. S., at 236; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91.

It appears that the framers of the Act did not contemplate its application to suits by employees.[15] In any event it seems obvious that they

[15] In the Senate debate Senator Steiwer criticized the bill as too broad in that it would even prevent employees from

did not have in mind suits to review the orders of governmental bodies, inasmuch as the administrative agencies which now operate in the field of labor relations did not then exist. We have grave doubts as to whether the Act should be construed broadly enough to apply to such situations, despite its language.[16] If the Act had

obtaining such injunctive relief against employers as was secured in *Texas & New Orleans R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548. Senators Norris and Blaine, supporting the bill, denied that it would reach proceedings brought by employees to enforce their rights under the Railway Labor Act (75 Cong. Rec. 4936–4937). During this discussion the following colloquy occurred:

"Mr. STEIWER. Does the Senator contend that the phrase 'association or organization' is applicable only to an employees' association or an employees' organization and is not applicable to an employers' association or an employers' organization? In other words, is this bill to be construed as working one way only or does it work as to both employer and employee without discrimination?

"Mr. BLAINE. I can conceive of no case where an employee would bring an action under this act along the line the Senator has suggested. The action would be brought against the employees or their association or their organization. There are no employees going to bring any action under this act against the employer in any labor dispute as defined in this act."

[16] That the Act has not generally been regarded as applicable to injunction suits involving the validity of Board action under the Railway Labor Act is indicated by the many cases in which the courts have entertained such suits without the point being raised or considered. *Association of Clerical Employees* v. *Brotherhood of Railway Clerks*, 85 F. (2d) 152 (C. C. A. 7); *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. (2d) 651 (C. C. A. 5), certiorari denied *sub nom. Grand International Brotherhood* v. *Kenan*, 301 U. S. 687; *Brotherhood of Railroad Trainmen* v. *National*

been literally applied to actions against Government officials, it would have reached the many suits brought to enjoin proceedings of the National Labor Relations Board, and yet it was never suggested in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, and similar cases, that the Norris-LaGuardia Act deprived the courts of jurisdiction. It is elementary that statutes are to be interpreted so as to "carry into effect the true intent and object of the legislature," and when the words of an act lead to a result plainly not contemplated or desired, the court may give effect to the purpose rather than follow the literal language into an area beyond the actual content of the legislation. *United States* v. *American Trucking Assns.*, 310 U. S. 534, 542–543, and cases cited.

In the instant case it seems unnecessary to decide this question insofar as the Board and its members are concerned, inasmuch as the portions of the complaint which have not been rendered

---

Mediation Board, 88 F. (2d) 757 (App. D. C.); *National Federation of Railway Workers* v. *National Mediation Board*, 110 F. (2d) 529 (App. D. C.), certiorari denied, 310 U. S. 628; *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 135 F. (2d) 780 (App. D. C.); cf. *Brotherhood of Railroad Shopcrafts* v. *Lowden*, 86 F. (2d) 458 (C. C. A. 10), certiorari denied, 300 U. S. 659; *Nord* v. *Griffin*, 86 F. (2d) 481 (C. C. A. 7), certiorari denied, 300 U. S. 673; *Railroad Yardmasters* v. *Pittsburgh & L. E. R. Co.*, 39 F. Supp. 875 (N. D. Ohio). *Contra: Cole* v. *Atlanta Terminal Company*, 15 F. Supp. 131 (N. D. Ga.).

moot do not in terms seek to enjoin or restrain their conduct but to have the Court annul, vacate or set aside the Board's finding and order. Although the prohibitions of the Norris-LaGuardia Act should not be subject to evasion by incorporating in decrees other verbs having the same effect as "enjoin" or "restrain," the present situation is not one in which the petitioners are seeking to circumvent the objects of the statute. Since no injunction against the Board is asked, we see no reason why the Act should be broadly interpreted here to reach a result not within its objectives.

Petitioners' prayer for injunctive relief against the B. R. T. and the Railroad Company does, of course, come within the prohibition against injunctions and restraining orders, so that the above observations are not applicable to Paragraph 8 of the prayer. The Norris-LaGuardia Act would bar the granting of the injunction sought in that paragraph,[17] unless the Court is of the view that the Act was never intended to be, and therefore is not, applicable to this type of proceeding. Since the relief sought against the carrier and the B. R. T. seems to be ancillary to the cause of action stated against the Board and its

[17] See *Cole* v. *Atlanta Terminal Co.*, 15 F. Supp. 131 (N. D. Ga.). To the extent that the Act is applicable, it prevents the issuance of an injunction, inasmuch as no attempt was made to comply with the requirements of Section 7 (29 U. S. C., Sec. 107). Whether or not those requisites could be met in this type of case need not be determined here.

members, it is possible to treat the entire proceeding as one not coming within the purview of the Act.[18]

II

THE JURISDICTION OF THE DISTRICT COURT

The Court has requested the parties to discuss whether the district court had jurisdiction to review the certification of the National Mediation Board.

The complaint (R. 5) states that the suit is brought under the Railway Labor Act and also under the general equity jurisdiction of the district court. The Railway Labor Act contains no provision authorizing the institution of a proceeding to set aside an order of the Mediation Board. The question, therefore, is whether the case falls within the general equity jurisdiction of the District Court for the District of Columbia.

a. The immunity of the United States from

[18] If the Switchmen's Union had sued as the representative of a craft to enforce its statutory rights by enjoining the carrier from treating with anyone else as the representative of that craft, the case might be regarded as falling within the exception to the Norris-LaGuardia Act recognized in the *Virginian Railway* case (300 U. S., at 563). Although Paragraph 8 of the petitioners' prayer for relief is consistent with this theory, we find it difficult to read the complaint as a whole as making any such claim; the complaint is concerned with the wrongful action of the Board, and not of the carrier. Furthermore no evidence was introduced as to what the carrier had done or would do. The carrier's answer indicated only that it would abide the decision of the Court (R. 73).

suit, in the absence of legislative consent, undoubtedly extends to the Board. Congress has nowhere consented to the Board's being sued. Accordingly, the district court has no jurisdiction over the Board itself.

b. Even though a government agency is not subject to suit, an action will lie against its members individually where they are acting or threatening to act beyond their authority. *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18, 21; *Philadelphia Company* v. *Stimson*, 223 U. S. 605, 619–620; *Hopkins* v. *Clemson College*, 221 U. S. 636, 642, *et seq.* In such cases the officers do not share the immunity of the United States. But since they are sued as individuals, relief cannot be obtained against them unless their personal conduct is such as to satisfy the ordinary requisites of equity jurisdiction. Cf. *Ex Parte La Prade*, 289 U. S. 444; *Beal* v. *Mo. Pac. R. Corp.*, 312 U. S. 45; *Watson* v. *Buck*, 313 U. S. 387, 400.

Under the Railway Labor Act, the certification of the Board is a mere finding of fact which may serve as the basis for an enforcement action brought by the successful labor organization if the carrier refuses to bargain with it. *Virginia Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 562. Although to that extent the award determines legal rights, no penalties are imposed for failure to bargain with a certified representative. Upon the issuance of a certification, the function

of the Mediation Board in the representation proceedings is completed. Thereafter, there is nothing the members of the Board can do to enforce the certification. Since the members of the Board do not enforce the certification or take any other action after its issuance, there would appear to be no conduct on their part susceptible of being enjoined which could cause petitioners irreparable injury.[19] An injunction against the Board members accordingly would avail petitioners nothing, since it would have nothing upon which to operate. Indeed, in view of the inability of the Board members to take further action affecting petitioners, there may not even be a controversy with them in the constitutional sense.

The complaint does not in terms seek an injunction against the members of the Board but a court order setting aside the certification. The certification is the official act of the Board *qua* Board, not of its members as individuals, and a court order acting directly upon the certification rather than upon the Board members would seem to be banned by the prohibition against suits against the United States and the lack of express statu-

[19] By this we do not mean to imply that a certification may not have the effect of injuring the unsuccessful organization. But such injury flows from compliance with the certification by the carrier, against which an enforcement proceeding may be brought by the certified organization, not from the possibility of future action on the part of the members of the Board.

tory authority for such a proceeding.[20] We do not think that the result would differ if the suit were regarded as one to compel the Board members to set aside the certification. To be effective such action would have to be done in their official capacities, for they could not as individuals cancel the certification. Cf. *Wells* v. *Roper*, 246 U. S. 335; *Belknap* v. *Schild*, 161 U. S. 10; *Cunningham* v. *Macon & Brunswick R. R.*, 109 U. S. 446, 454–457; *Louisiana* v. *McAdoo*, 234 U. S. 627; *Transcontinental & Western Air, Inc.* v. *Farley*, 71 F. (2d) 288 (C. C. A. 2), certiorari denied, 293 U. S. 603.[21]

c. These obstacles to jurisdiction over the Board and its members do not apply to the other

[20] The issuance of a certification is not a ministerial act, but one requiring the exercise of administrative discretion, and the Board undoubtedly had jurisdiction to issue the certification whether or not its decision was correct. Its failures to reach a correct judgment does not constitute its members wrongdoers or violate any statutory duty owing to petitioners such as would furnish the basis for a suit against a private individual or for an action of mandamus.

[21] It does not follow from the fact that an injunction will not lie against the Board members after a certification has been issued that an injunction will lie against the issuance of the certification. *Heller Bros. Co.* v. *Lind*, 86 F. (2d) 862 (App. D. C.), certiorari denied, 300 U. S. 672. Courts will not interfere prematurely with the completion of the administrative process. *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125, 129–130. Inability to attack the certification directly would not result in its being immune from judicial review. Cf. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515; *Brotherhood of Railway Clerks* v. *Nashville, C. & St. L. Ry.*, 94 F. (2d) 97 (C. C. A. 6).

defendants. Apart from the Norris-LaGuardia Act (as to which see Point I, *supra*, pp. 15–22), a court of equity may well have jurisdiction over an action brought by a labor organization claiming to have the lawful right exclusively to represent a craft of employees to restrain an employer and another organization from bargaining with respect to that craft. The *Texas & New Orleans* and *Virginian Railway* cases establish that deprivation of the right to bargain as exclusive craft representatives causes irreparable injury and warrants equitable relief. The district court would thus seem to have had jurisdiction of the case in so far as the other defendants are concerned.

The absence from the Railway Labor Act of any provision for judicial review of Board certifications does not, in our opinion, manifest a legislative intention that such certifications were to be conclusive upon the courts.[22] The legislative history of the Act is silent upon this point. But in the *Virginian Railway* case, this Court permitted the validity of the certification to be challenged in a suit against the carrier (300 U. S., at 559–560), and since that time the courts have uni-

[22] Cf. *Shields* v. *Utah-Idaho Central R. Co.*, 305 U. S. 177, in which a determination of the Interstate Commerce Commission pursuant to Section 1, First of the Railway Labor Act, when collaterally attacked, was treated as any other order of the Commission in so far as the scope of judicial review was concerned, despite the absence of any provision in the Act for such review.

formly held that the Board's certifications were entitled to the same respect as determinations of other administrative bodies.[23]

The Board's decisions may thus be judicially reviewed in an appropriate case to which the competing labor organizations and the carrier are parties. In such a case between the interested parties, particularly when an important question

[23] The courts have agreed that a certification is not to be set aside unless arbitrary, capricious, or otherwise unlawful. *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. (2d) 757 (App. D. C.); *National Federation of Railway Workers* v. *National Mediation Board*, 110 F. (2d) 529 (App. D. C.), certiorari denied, 310 U. S. 628; *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. (2d) 651 (C. C. A. 5), certiorari denied *sub nom. Grand International Brotherhood* v. *Kenan*, 301 U. S. 687; *Nashville, C. & St. L. Ry.* v. *Railway Employees' Dept.*, 93 F. (2d) 340 (C. C. A. 6), certiorari denied, 303 U. S. 649; *Brotherhood of Railway Clerks* v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6); *Brotherhood of Railway Clerks* v. *Virginian Ry. Co.*, 125 F. (2d) 853 (C. C. A. 4). When the Board holds hearings, this is determined on the basis of the record before the Board, and the substantial evidence rule is applicable. E. g., *Order of Railway Conductors* v. *National Mediation Board*, *supra*. When the Board does not hold hearings, the determination is based upon the evidence taken in court. *National Federation of Railway Workers* v. *National Mediation Board*, *supra*; cf. *Virginian Ry Co.* v. *System Federation No. 40*, 300 U. S., at 562. The statute does not require the Board to hold hearings, and has given the Board no subpoena powers. Nevertheless, the Board does hold hearings when there is a controversy as to the extent of a voting unit in a representation dispute, inasmuch as in such cases the parties generally see that all essential evidence is presented to it.

as to the meaning of the Act is involved, the Board would be inclined to intervene or to appear as *amicus curiae* in defense of its decision. Where the Board and its members are made defendants, as here, it seemed futile to move for a dismissal of the complaint as to them, if the granting of such a motion would be followed immediately by an application on the Board's behalf for leave to participate in the case. In view of these considerations, the Board has deliberately refrained from attacking the court's jurisdiction over it in a number of cases brought against it in the District of Columbia,[24] which is, of course, the only district in which its members can be personally served. It failed to raise the jurisdictional questions in the lower courts in this case, and we have briefed them here because the Court has so requested.

III

THE VALIDITY OF THE BOARD'S CERTIFICATION—WHETHER THE RAILWAY LABOR ACT REQUIRES A BARGAINING UNIT TO BE CARRIER-WIDE

In this case the Board found on the facts that the entire New York Central, including the Michigan Central and Lines West, was operated as and was a single carrier within the meaning of the Railway Labor Act. This being so, the Board

[24] See the first three cases cited in note 23, *supra*.

concluded as a matter of law that all the yardmen on the New York Central formed a single craft for purposes of collective bargaining.

In the courts below, petitioners attacked as unsupported by substantial evidence the Board's finding of fact that the entire New York Central was operated as a single carrier. The district court held this finding to be "supported both by substantial evidence and the weight of the evidence" (R. 80). The Court of Appeals held it to be "a very reasonable conclusion" (R. 170).[25] Presumably in view of the concurrent findings of the Board and the two lower courts, petitioners have now abandoned their contention as to the failure of the evidence to support the Board's findings in this respect.

This leaves for determination only the question of law whether the Board was required by the Act to hold, as it did, that the bargaining units into which railroad employees are to be divided must invariably be carrier-wide. The Board admitted that arguments could be made on either side of this question, but found that Congress had given it no authority to consider the advantages or disadvantages of the carrier-wide unit from the standpoint of policy (R. 46). Its decision was squarely predicated on its conclusion that the statute should be construed as depriving it of

[25] Mr. Justice Rutledge concurred on this point (R. 181).

power to recognize a bargaining unit less than carrier-wide.

On the legal question thus presented, three positions have been taken:

(1) The Board and the majority of the Court below have construed the Act as requiring the bargaining unit to be carrier-wide. If this view be adopted the decision below should be affirmed.

(2) Mr. Justice Rutledge was of the opinion that the Act imposed no inflexible rule in this respect but gave the Board discretion to take all factors into consideration in determining the geographical limits of the bargaining unit. If this view prevails, the case should be remanded to the Board for the exercise of its discretion.

(3) Petitioners, while agreeing with Mr. Justice Rutledge that a carrier-wide unit is not mandatory, go further and contend that the Board was required as a matter of law not to combine the Michigan Central and the portions of Lines West on which the Switchmen's Union represented the yardmen with the other divisions of the New York Central. If this view be accepted, the judgment below should be reversed without remanding the cause for the exercise of the Board's discretion.

We shall first take up the basic question as to whether the Act establishes an inflexible test, and then discuss petitioners' contentions.

A. *The meaning of "craft or class," as indicated by the legislative history of the Act*

The Board's ruling that the bargaining unit was required to include all employees of a carrier performing similar work was predicated on the language of the Act and on its own prior decisions and rulings.[26] The Board's opinion (R. 46) refers in particular to the statement in Section 2, Fourth, that—

> The majority of any craft or class of employees shall have the right to determine who shall be the *representative* of the craft or class for the purposes of the Act. [Italics supplied.]

The use of the singular "representative" was thought to show that there could be only one representative for each craft or class on a carrier. We agree with Mr. Justice Rutledge (R. 183)

[26] The Board's opinion reviews its decisions supporting the interpretation of the Act here adopted (R. 40–45), and also quotes from a letter written to the New York Central Railroad in 1937 in which it stated its position to be "that where a dispute exists within a class or craft, the law gives us no discretion, but to make a determination of choice of representative for the entire class or craft for the entire railroad involved regardless of presently existing agreements, unless all parties to the present dispute agreed otherwise" (R. 45).

This administrative interpretation would ordinarily be entitled to weight. The opinion of Mr. Justice Rutledge has, however, advanced arguments not previously considered by the Board, and the Board at the present time is taking no position as to how the statute should be construed pending the decision of this Court.

that the use of the singular proves only that a carrier was required to deal with one representative for each craft or class, and cannot be regarded as defining the craft to be represented. Accordingly, we do not believe that the statutory language relied upon solves the problem.[27]

Nevertheless, even though the bare language of the Act does not compel the result reached by the Board, its decision is supported by the legislative history of the statute. The Act, in paragraphs Fourth and Ninth of Section 2, defines the bargaining unit as the "craft or class," without further amplification.[28] Those words, of course,

[27] We shall show (*infra*, pp. 44–51) that other provisions of the Act upon which petitioners rely have no bearing upon this problem.

[28] These words do not define possibly conflicting units, as petitioners suggest (Br. 9, 37). The Board has differentiated between "craft" and "class" as follows: "Analyzing the phrase 'craft or class' (which the law fixes as the unit for collective bargaining), it is to be noted that there are two types of organization in the railroad industry, one being the craft as ordinarily known to trade unionism where definite provision is made in the rules and working agreements for the education and development of apprentices and helpers. This type is found more particularly in the shops engaged in maintenance of equipment. All other railroad labor has been in the past recognized and dealt with by management in reasonably well defined classes. For example: the organization of Maintenance of Way employees has been made and recognized for many years as consisting of section foremen, track laborers, bridge and building foremen, bridge and building mechanics and helpers." National Mediation Board, *In the Matter of Representation of Employees of the Delaware, Lackawanna & Western Railroad Company*, Cases M–199 and R–358, Aug. 13, 1937, p. 6.

carry a ~~practical~~ functional and occupational connotation, but in their ordinary meaning do not suggest geographical boundaries. The crucial question is whether, as used in this Act, the words were regarded as describing a carrier-wide bargaining unit.

This very point was raised at the hearing before the House committee. The 1934 amendments to the Railway Labor Act were originally prepared and explained to the congressional committees by Mr. Eastman, then Federal Coordinator of Transportation.[29] In answer to a question by a member of the Committee, he testified on this precise point as follows (House Hearing, p. 57):

> Mr. HUDDLESTON. There seems to be an ambiguity in the second sentence of this subsection fourth.
>
> "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act."
>
> And, I am uncertain just what is meant by a majority. Does that mean a majority of all of the employees in the service of that particular employer?

[29] Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act Amendments, 73d Cong., 2d Sess., pp. 15–65 (hereinafter referred to as "House Hearings"), and Hearings before the Senate Committee on Interstate Commerce on S. 3266, to amend the Railway Labor Act, 73d Cong., 2d Sess., pp. 9–26, 145–160 (hereinafter referred to as "Senate Hearings").

Commissioner EASTMAN. As it reads, I think it does, sir.

Mr. HUDDLESTON. For illustration, let us take the case, we will say, of the machinists at a given shop when there are other machinists employed at other shops. Would these machinists at that particular shop be able to get together under this sentence and bargain with their employer?

Commissioner EASTMAN. Well, my understanding of the way in which the words "craft" or "class" have been defined in the past, is that they would cover the entire service of any particular carrier. That is, it would not be a class of employees, to pick out those that did work in a particular shop, but it would be all of the employees of the carrier, no matter in what shop they were located, who did that particular kind of work.

Mr. HUDDLESTON. For that particular employer?

Commissioner EASTMAN. Yes, for that particular employer.

Mr. Eastman also stated (House Hearings, p. 44):

* * * When it comes to collective bargaining in the matter of wages and working conditions, it seems to me plain that a company ought not be compelled to deal with more than one organization. It ought not to have to make bargains with two or three different organizations. * * *

The proposed bill was construed in the same way by Mr. M. W. Clement, chairman of the committee of the railroads designated to deal with the proposed amendments to the Railway Labor Act. Indeed, because he thought that the craft or class unit was to be carrier-wide, Mr. Clement opposed the majority rule provisions as a whole, and also urged before the House Committee that a proviso be added which would have permitted the territorial lines drawn in existing agreements to be followed. Mr. Clement testified as follows (*id.*, at p. 126):

> It is possible on a large system for the employees of one portion of that system to belong to one organization, and employees on another part of the system to belong to another organization, both having majorities in their respective territories. Management contends that the employees in each of these territories should have a majority right of representation in their territories, yet under a strict interpretation of the bill as it stands, the organization in the territory of greater employee density could outvote the organization of a territory having lesser employee density, thereby depriving them of their real choice of representation.

He proposed an amendment to Section 2, Fourth, as follows (*id.*, at p. 128):

> Line 10, following the word "Act", insert "Provided, that only each class or craft embraced in any existing agreement shall

be the employees to be considered to determine the majority of such employees for the purposes of representation."

This protects the existing agreements and makes representation coextensive.

* * * * *

The proviso in line 10 makes workable the sentence to which it is attached, without in any way changing its purport. It still provides that the majority of a class or craft shall govern, but does not permit the employees in one division or territory, working under agreement with one organization, to upset the will of the majority in another division or section who are working under agreement with another organization.

Taken as a whole there was no such paragraph in the Railway Labor Act of 1926. It is our recommendation that it be excluded from the proposed revised act, as we believe it is a paragraph of ambiguity and will probably create discord.

Mr. Walber, Vice-President of the New York Central, also opposed the bill, using its effect upon the representation of yardmen on Lines West as an illustration of the way in which he thought it would operate. He said (*id.*, at p. 155):

A local situation on the New York Central will illustrate my point. On what was the Lake Shore & Michigan Southern there are agreements with the Switchmen's Union who represent the men in certain yards, and the Brotherhood of Railroad

> Trainmen who represent the yardmen in other yards. This condition has existed for 30 years or more. There are no complications. The yards are separate and distinct from each other, and the seniority of switchmen is confined to the particular yard. However, if the proposed amendments are adopted, the men would have a perfect right to reopen the question of representation, and the management would be faced with numerous questions under the law as possible interference with the jurisdiction claimed by the organizations. * * *

The situation which Mr. Clement and Mr. Walber feared and sought to prevent is precisely that involved in the case at bar. The proposed amendment was not adopted by the Committee in the bill as reported, nor contained in the bill as finally passed.

The bill was passed in the form approved by Mr. Eastman, without further comment on the point in the committee reports or in the debates on the floor of Congress. The interpretation given the bill before the committees, concurred in both by those favoring and those opposing it, would seem to be the best present indication as to what it was intended to mean.

Mr. Justice Rutledge, dissenting below, was of the view that the legislative history of the Act shows that Congress intended to authorize the Board to settle jurisdictional disputes and that

"there was no more reason for empowering the Board to determine a functional jurisdictional dispute than a geographical or regional one" (R. 189). He recognized that Commissioner Eastman differentiated between the two situations, but found that (R. 189) "the distinction, considered in the light of the statute's total omission of definitive terms, functional and geographic, and of the equality of application of the reasons, for making the omission, to both types of issue, is untenable, notwithstanding its distinguished sponsorship." We agree that, when a representation dispute exists, the Act generally leaves the matter of craft definition to the Board and that the phrase "craft or class" is sufficiently broad to allow the Board to exercise discretion in applying it in particular cases. There are, however, reasons supporting a single inflexible rule in fixing the geographical limits of the different crafts, which do not apply in determining their functional boundaries.

Whether certainty, where feasible, is more desirable than flexibility in this field, and whether a compulsory carrier-wide unit is preferable as a matter of policy are difficult questions to answer. The Board's opinion states "Doubtless serious arguments may be made both for and against each method" (R. 46). In theory, disputes are likely to be engendered if groups of employees of a single company performing the same type of work are divided into separate bargaining units with different representatives. Competition between

the representatives might interfere with harmonious labor relations, and there would be opportunity for the employer to play off one group against the others.[30] On the other hand, it can be said that where groups of employees on geographically separate portions of a railroad have over many years bargained without friction through different representatives, a requirement that the bargaining unit be carrier-wide will create disputes where there were none before, as it has here.[31] Such a rule might prevent the recognition of any organization representing workers

[30] In so far as the railroads are concerned, rates of pay and other conditions of employment are generally agreed upon in nation-wide bargaining conferences between carriers and the train service brotherhoods jointly, including the Switchmen's Union and the Brotherhood of Railroad Trainmen.

[31] This was Mr. Justice Rutledge's view; he stated (R. 182–183):

"* * * But I think Congress was as far from commanding that all less than carrier-wide units be ousted as it was from concreting all units in the contract mold of 1934.

"The view that ouster is required would go far to destroy, rather than to promote, the peace in labor relations and the uninterrupted service of the carriers which were the statute's declared and primary objects. Section 1a. It makes the Act an invitation and an instrument for creating labor strife, especially in stirring up jurisdictional disputes. It gives this weapon to, and throws the whole weight of the legislation in favor of, the big unions as against the smaller ones. All that is needed for ouster of the latter is to cause some employee to question or "dispute" their right to act as representative, which a large union can always do. From that point on the ouster is almost automatic. The result of the election is, in these circumstances, a foregone conclusion. The Board becomes merely an election judge, having in effect a ministerial and often only a perfunctory function. This is

on part of a carrier where a majority of the employees performing the same tasks in other regions were not organized, and would thus impede the process of collective bargaining.[32] Furthermore, since the peaceful settlement of controversies through collective bargaining is dependent upon representation of the workers in accordance with their wishes, it may be questioned whether the forcible incorporation of a reasonably large and separate unit already satisfactorily represented into a larger unit will lead to harmonious labor relations.[33] It was Mr. Justice Rutledge's view that these conflicting considerations might better be resolved by the Board in the light of the facts of each particular case, and not on the basis of an inflexible rule requiring a carrier-wide unit.[34]

---

but a policy of compulsory liquidation of the smaller bargaining units. I do not believe Congress intended to adopt it. Nor do the terms of the statute comport with such an intention."

[32] On some railroads there are crafts and classes not yet covered by collective agreements. This situation is more likely to arise, however, on the air lines, where most of the employees are not covered by such agreements. National Mediation Board, *Eighth Annual Report*, Table 14 (opposite page 43). The provisions of the Act, including Section 2, are made applicable to carriers by air by Title II, 49 Stat. 1189, 45 U. S. C., Secs. 181–188.

[33] On this, see the comments of Mr. Justice Rutledge (R. 190–192).

[34] It was his opinion that the statute emphasized the right of self-organization, and that this permitted the employees to divide themselves into bargaining units as they saw fit, sub-

The Board declined to exercise its expert judgment as to which of the above considerations of policy it deemed the most persuasive (R. 46). We find it difficult to determine which of the various intangible factors is entitled to the most

ject to the qualification that if they could not agree on the unit, the Board must make the decision. His opinion states (R. 192):

"But when * * * the employees cannot agree, some power must provide the decision as to the appropriate unit, unless the Act is to break down and its purposes be defeated. Those consequences cannot be avoided by leaving things forever as they have been set by the arrangements, contractual or otherwise, made in and for another day long gone. There must be some room for change and adjustment, but it need not be, and the law does not require it to be, in all cases a total disruption of existing arrangements.

"Between these two extremes the statute has drawn a compromise and, in my opinion, the only workable one. This is, in effect, that the Board must decide, when a dispute concerning representation presents the issue, 'who may participate in the election,' that is, what is the appropriate or proper unit of which the sense is to be taken by the majority vote (or other means) the Act requires. That decision is not to be made arbitrarily, or uniformly in all cases without regard to the varying conditions presented. It is to be made in the light of various factors, as shown by the evidence presented to the Board, including the size of the carrier, the nature of the preexisting or prevailing arrangements, the disruption of harmonious relations with the employer which the proposed change, or the failure to make it, might bring. Approached in this manner, the Board's decision might be for a carrier-wide craft or class or for one less extensive, depending upon the case made. Conceivably in some cases decision either way might be sustained. But in all events it is one which should be made by the exercise of the Board's judgment, not as an automatic reflection of a statutory requirement of carrier-wide crafts."

weight.[35] We think it sufficient to point out that there is no basis for suggesting that Congress was deliberately differentiating as a matter of policy between the Board's power to determine geographical and functional craft boundaries. The legislative history suggests merely that the framers of the Act though that the expression "craft or class" had a definite meaning in the former situation but not in the latter.

To the extent that the discussion before the House Committee reflects the usage of persons versed in the industry, it would appear that "craft or class" in railroad labor parlance contemplated a carrier-wide application. Stated otherwise, all employees doing certain kinds of work were, as a unit, to deal with the carrier as a unit. Congress could well have used the phrase in this sense in the setting of this Act and thus have intended to give the Board discretionary power only to determine the functional boundaries of the approved employee unit. Whether the legislature may be said to have had such an intention depends upon whether the explanation made by Mr. Eastman to the committee, with the rejection of the amendment referred to above, can be re-

[35] It may be of significance in this respect that the agency determining representation disputes outside of the carrier field is required by Congress to decide on the facts of each case whether the appropriate unit for collective bargaining "shall be the employer unit, craft unit, plant unit, or subdivision thereof." National Labor Relations Act, Section 9 (b), 29 U. S. C., Sec. 159 (b).

garded as having been adopted by Congress when it passed the bill in the form submitted by him. The consequence of adopting the carrier-wide test may in particular cases be unfortunate, and as a matter of policy there is much to be said in favor of the position taken by Mr. Justice Rutledge. In the circumstances, however, our conclusion is that the Board's decision is correct since it accords with the only available manifestations of legislative intention. We have no other reason to oppose a construction of the Act which would allow the Board to exercise greater discretion if the Act may be construed to permit it to do so.

B. *There is no merit to petitioners' arguments that the Board was required as a matter of law to hold the yardmen on the Michigan Central and Lines—West to be separate crafts*

Petitioners contend that on the facts of this case the Board was required, presumably as a matter of law, to hold that the yardmen on the Michigan Central and Lines—West constituted separate bargaining units. The arguments advanced in support of this contention ignore the manifestations of legislative intention just considered and, as we shall show, are also otherwise without merit. Viewed broadly, their contentions seem to rest on the proposition that "the right of self-organization" allows groups of em-

ployees an unlimited right to establish by contract whatever bargaining units they please. Such a position cannot be reconciled with the doctrine of majority rule, and is also inconsistent with the provisions of the statute defining a bargaining unit as a "craft or class."

1. *The employees "involved in the dispute."*— Petitioners call attention (brief pp. 26–34) to the provision in Section 2, Ninth, that the Board shall certify individuals or organization "to represent the employees involved in the dispute," and claim that the yardmen on the entire New York Central were not involved in any dispute but that at most the dispute related to the men in the yards operating under contract with the Switchmen's Union. Petitioners' position is that since the B. R. T. is the undisputed representative of the yardmen on the remainder of the railroad, the men in other yards cannot be parties to the dispute.

No one doubts, of course, that the Board's authority extends only to the employees "involved" in a dispute. But the Act provides (Sections 2, Fourth and Ninth) that representatives are to be chosen by the majority of a craft or class, and obviously all the members of such a bargaining unit are involved in a dispute as to its representation.[36] This is true even if separate

[36] Petitioners imply (Br. p. 30) that the phrase "involved in a dispute" as used in paragraph Ninth defines or narrows the bargaining unit, which is the craft or class. The word "involved" obviously was designed to refer to the members of

portions of the same craft each unanimously favor a particular representative. If the employees at one end of a shop or yard (assuming a carrier with only one shop or yard) unanimously favor a particular labor organization, and those at the other end another union, it certainly could not be contended that there was no dispute as to the representation of the shopmen or yardmen, or that all the men at both ends of the shop or yard were not "involved."[37] Accordingly, if all the yardmen employed by the New York Central Railroad constitute a single craft or class, it is immaterial that a dispute may not exist among employees of the separate divisions.

Petitioners' argument that the men on some of the divisions are not involved assumes that each division constitutes a separate craft or class, and plainly can have no foundation otherwise.[38] Inasmuch as that is the precise point petitioners are seeking to prove, the argument begs the question.

---

the craft or class, as distinct from outsiders, not to change the nature of the unit.

[37] We have presented a hypothetical case as to the outcome of which we believe there can be no reasonable dispute. Possibly petitioners would contend that if the mechanics at the north and south ends of a shop had previously been represented under separate agreements, they must continue to remain separate bargaining units. We do not believe that the words "craft or class" used in the Act can be given such a meaning.

[38] Petitioners state (Br. p. 26):

"* * * A group of employes satisfied with their own representation cannot reasonably be said to have a repre-

For the Board did not permit employees not "involved in the dispute" to vote unless it erred in holding all the New York Central yardmen to be a single craft or class.

2. *Interference with freedom of association and selection of representatives.*—Petitioners take the position that the Board's action in holding that all of the New York Central yardmen belong to a single craft or class unlawfully limits the employees' "freedom of association" and violates the provisions of the Act giving them the right to select representatives of their own choosing. For this proposition, petitioners first rely on the general purpose of the Act "to forbid any limitation upon freedom of association" (Section 2), and on the provisions prohibiting carriers from interfering with their employees' choice of representatives (Section 2, Third and Fourth). The interference with freedom of association to which these provisions refer consists of interference by the employer, as is apparent from the terms employed, their general context, and their legislative background.[39] They obviously have nothing to do with the scope of the bargaining unit.

---

sentation dispute within the meaning of the Act with another group of employees who are satisfied with their representation."

If the two "groups" are in the same craft or class, which is the statutory bargaining unit, their designation of different representatives results in the very type of dispute which Section 2, Ninth, was intended to settle. The mere fact that two groups desire different representation does not make them separate bargaining units.

The provisions were reenacted or first inserted in the Act in 1934, when the majority rule provisions and Section 2, Ninth, in particular, which relate to that subject, were adopted. The majority rule principle is from its very nature inconsistent with absolute freedom of association on the part of employees, since it deprives a dissenting minority of its right to choose its own representative. Obviously the general provisions of the Act protecting the employees' right to self-organization were not thought to be incompatible with majority rule.

3. *The proviso in Section 1, Fifth.*—Petitioners argue that the Board was deprived of authority to determine the limits of the craft or class in this case by the proviso in Section 1, Fifth, of the Railway Labor Act—

> * * * That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

H. Rep. No. 1944, S. Rep. No. 1065, 73d Cong., 2d Sess.; House Hearings, pp. 23 *et seq.*; Senate Hearings, pp. 11, *et seq.* See *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515.

We fail to see how this proviso has any bearing upon the present case. Section 1, Fifth, defines "employee," for purposes of the Act, as including every person performing any work for a carrier defined as the work of an employee or subordinate official in orders of the Interstate Commerce Commission then in effect or as the same might be amended. (See p. 56, *infra*.) The purpose of the definition was obviously to indicate what persons were subject to the statute as a whole. The Interstate Commerce Commission had previously promulgated a classification of employees to be used in the filing of reports to the Commission,[40] and it was this classification which was referred to in the definition.

This minute classification of employees for reporting purposes has no relationship to the manner in which railroad employees are grouped into collective bargaining units. In order to avoid all doubts on this score, the proviso was added to the definition. The first clause provides merely that the Commission classification shall not be regarded as defining the crafts into which employees may be voluntarily organized.[41] The second clause, stating that "the jurisdiction or powers of such em-

[40] *Rules for Reporting Information on Railroad Employees, together with a Classification and Index of Steam Railroad Occupations*, issued by the United States Railway Labor Board and approved by the Interstate Commerce Commission (1921).

[41] See *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.).

ployee organizations" is not to be regarded as limited or defined by the provisions of the Act or the orders of the Commission, means only that the Act shall not limit the jurisdiction of labor organizations. Thus the Act would not prevent the engineers' union from representing the craft of conductors if both the union and the employees involved were willing. Obviously, neither of the clauses has any application to the present case, inasmuch as no one has held that the Switchmen's Union lacked jurisdiction to represent yardmen on the New York Central or made any attempt to follow the classification of employees made by the Interstate Commerce Commission.

Petitioners contend (Br. p. 39) that the carrier-wide definition of craft and class adopted by the Board deprived the Switchmen's Union of the right to represent employees on part of a road only. This does not limit the jurisdiction of the organization in the sense in which that expression is used in Section 1, Fifth. It is an inevitable concomitant of the principle of majority rule that no labor organization has the right to represent a minority of a craft or class. Section 1, Fifth, obviously was not intended to nullify the majority rule provisions of the Act.

Section 1, Fifth, was a part of the Railway Labor Act as originally enacted in 1926. At that time there was no provision in the Act equivalent to the present Section 2, Ninth, for the settlement of representation disputes through the hold-

ing of elections. The latter paragraph was inserted in the statute when it was revised in 1934.[42]

We think it clear that Section 1, Fifth, was never intended to preclude determination by the proper board of the limits of a craft or class as an aid to the effective settlement of representation disputes. Thus there can be no conflict between Section 1, Fifth, and Section 2, Ninth. If, how-

[42] Petitioners (Br. pp. 35–38, 41) gloss over the different origins of the Railway Labor Act of 1926, which did not contain the provisions defining the bargaining unit and authorizing the Board to hold elections, and the Act as amended in 1934, which is now before the Court. They refer to "the Act" as "the joint product of railway management and railway labor" (p. 35) and also to "the employees and their organizations, who are jointly responsible [with] railroad management for the provisions of the present law" (Br. p. 41). It is true that the 1926 Act was the product of such joint action. But the 1934 amendments were prepared by the Federal Coordinator of Transportation, and submitted and explained to Congress by him. They were opposed by the representatives of the carriers (House Hearings, pp. 122 *et seq.*; Senate Hearings, pp. 55 *et seq.*), including Mr. Walber of the New York Central (House Hearings, pp. 152–156), and also in certain respects, by some of the railway labor organizations (78 Cong. Rec. 12372), but were adopted in the form approved by Mr. Eastman. It is apparent that the understanding of the draftsmen of the 1926 Act, and the attitude of the organizations which they represent, do not reflect the meaning of the statute as amended in 1934. Mr. Donald Richberg, who is cited by petitioners (Br. p. 38), explained the 1926 Act to the congressional committees. His understanding as to the meaning of that statute is, of course, material and helpful. But it does not appear that he had anything to do with the provisions of the 1934 Act which are involved in this case.

ever, Section 1, Fifth, is to be construed in the manner suggested by petitioners, the Board would be deprived of its unquestionable [43] power to determine who may participate in elections whenever a "jurisdictional" question is raised. As the legislative history set forth in the opinion of Mr. Justice Rutledge (R. 184–188) shows, Section 2, Ninth, was intended to give the Board that very power. If there should be any conflict between the two sections, the specific provisions in the 1934 Act would, of course, take precedence over the earlier general clause. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 563, and cases cited.

4. *Preexisting contracts.*—Petitioners have argued that the Board was bound to follow the grouping established in preexisting contracts between a carrier, or its predecessors, and its employees. In support of this position petitioners cite three decisions of the court below itself and one of the Sixth Circuit as in conflict with the decision below in the instant case.

All the judges of the Court of Appeals concurred in finding this argument unsound (R. 171, 181–182). Congress provided that the bargaining unit should be the "craft or class," a phrase which would not have been used simply to describe the units recognized under prior con-

[43] Many cases have upheld the Board's right to exercise this power. See note 23, p. 27, *supra*.

tracts. As has been pointed out, (*supra*, p. 35) an attempt to amend the Act so as to give effect to the craft boundaries previously established by contract was unsuccessful. It is clear, for example, that if in 1934 the shopmen and conductors on a railroad happened to be bargaining under a single agreement, presumably because they had chosen the same representative, they would, nevertheless, not be members of the same craft or class. In the same way, we think that the Act does not mean that every division of a carrier or every shop or yard must remain a separate bargaining unit merely because it was covered by a separate contract when the Act became effective. Nor does it mean that every portion of a large railroad which originally was operated by an independent company and whose employees accordingly once constituted separate crafts or classes must continue to be treated separately after the operations are merged with those of the larger unit. Many railroads have resulted from consolidations of numerous smaller lines, and we think it clear that Congress did not intend such non-existent operating units to form the basis for future craft or class representation.

Petitioners now argue (Br. p. 47) that acceptance of their position would not "freeze railroad labor in the contractual mould of 1934" but would permit a change in the bargaining unit if the "group" (not craft or class) covered by the con-

tract itself so desired. But the fact that a group covered by an existing contract wishes to remain a collective bargaining unit does not prove conclusively that it is a craft or class.

The cases on which petitioners rely do not make the preexisting agreements conclusive, but hold only that they are among the factors to be considered by the Board in determining the functional or occupational limits of the craft or class unit. *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. (2d) 757 (App. D. C.); *Brotherhood of Railway Clerks* v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6); *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.).[44] In this they have accepted the position of the Board as stated in its First Annual Report (p. 20).[45] Furthermore, these cases were not con-

[44] Petitioners contend that the decision below is inconsistent with *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 135 F. (2d) 780 (App. D. C.) decided by the same members of the Court of Appeals on the same day as the instant case. In that case the question was whether certain employees belonged to the craft of yardmen or the craft of conductors. Since there was no dispute as to the representation of either craft as such, irrespective of which the employees in question belonged to, the court upheld the Board's decision that there was no representation dispute within the meaning of Section 2, Ninth, and that accordingly the Board had no jurisdiction.

[45] The first of the above cases referred with approval to the statement in the Board's report. The test applied by the Board was amplified in National Mediation Board, *In the Matter of Representation of Employees of the Delaware*,

cerned with the geographical division of the employees into bargaining units but with how the line should be drawn between men engaged in different types of work; there was no occasion for the courts to consider the legislative history directly bearing on the question of geographical division.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
ROBERT L. STERN,
Attorney.

OCTOBER 1943.

Lackawanna & Western Railroad Company, Cases M–199 and R–358, Aug. 13, 1937, as follows (pp. 7–8):

"When it became necessary for the Board to determine those eligible to participate in the selection of representative by the majority of the craft or class, the Board has been guided by these general principles:

"(a) To follow, so far as practicable, the past practice in grouping of employees for representation purposes;

"(b) To consider the nature of the employment, supervision, practicable lines of promotion and demotion, with accompanying seniority, to develop on the one hand protection of the employees from arbitrary action of management and a definite line of development of employees with a view to efficient operation.

"(c) The public interest in preventing interruptions of commerce.

APPENDIX

The pertinent provisions of the Railway Labor Act of 1926, 45 Stat. 577, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Secs. 151, *et seq.*, read as follows:

> SECTION 1. When used in this Act and for the purposes of this Act—
>
> First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party in-

terested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

* * * * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * *

GENERAL PURPOSES

SEC. 2. * * * (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to for-

bid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

* * * * *

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *

* * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the

same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

* * * * *